Contech Division, SPX Corporation *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Cases 7–CA–39049, 7–CA–39150, 7–CA–39276, and 7–CA–39472

April 9, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND WALSH

On July 31, 1998, Administrative Law Judge George Alemán issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting/answering brief. The Union also filed cross-exceptions and a supporting/answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Contech Division, SPX Corporation, Dowagiac, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Richard F. Czubaj, Esq., for the General Counsel.
David Buday and *Elizabeth Lykins, Esqs. (Miller, Johnson, Snell & Cummiskey, P.L.C.)*, of Kalamazoo, Michigan, for the Respondent.
Michael L. Fayette, Esq. (Pinsky, Smith, Fayette, & Hulswit), of Grand Rapids, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEORGE ALEMÁN, Administrative Law Judge. Pursuant to various charges and amended charges filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (the Union), between October 2, 1996, and March 21, 1997, the Regional Director for Region 7 of the National Labor Relations Board (the Board) issued a third amended consolidated complaint on March 31, 1997 (the complaint),[1] alleging that Contech Divi-

[1] The General Counsel and the Union have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d. Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

There were no exceptions to the judge's finding that the Respondent did not violate Sec. 8(a)(3) and (1) of the Act when it failed to grant employee Shirley Stroud a 50-cent-wage increase.

In *Contech Division*, 322 NLRB No. 111 (1996) (not reported in Board volumes), the Board ordered the Respondent to bargain, on request, with the Union as the exclusive representative of the unit employees. The United States Court of Appeals for the Sixth Circuit subsequently enforced that Order. *Contech Division v. NLRB*, 164 F.3d 297 (6th Cir. 1998), cert. denied 528 U.S. 821 (1999). In the present case, the judge found, inter alia, that the Respondent violated Sec. 8(a)(5) and (1) of the Act by suspending operations at plant #3 and laying off employees without giving the Union notice and opportunity to bargain over the decisions or the effects of those decisions on unit employees. In its exceptions, the Respondent argues that under *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981), and *Dubuque Packing Co*., 303 NLRB 386 (1991), enfd. 1 F.3d 24 (D.C. Cir. 1993), it had no obligation to engage in decision bargaining with the Union. The judge specifically rejected the Respondent's argument that this allegation must be dismissed under *First National Maintenance*. We agree with the judge. In this connection, we also rely on the Board's decision in *Kajima Engineering*, 331 NLRB 1604, 1619–1620 (2000), which involved a similar employee layoff situation that had been precipitated by a loss in customer work orders. In *Kajima*, the Board found that the layoff decisions constituted mandatory subjects of bargaining because they were "more akin to the *First National Maintenance Corp.* second category of management decisions, such as the order of succession for layoffs and recalls, production quotas, and work rules, which are 'almost exclusively "an aspect of the relationship" between employer and employee.'" *Kajima,* supra, slip op. at 17, quoting from *First National Maintenance*, 452 U.S. at 677.

We further reject the Respondent's argument that under *Dubuque*, it had no obligation to bargain with the Union over these decisions. In *Westinghouse Electric Corp*., 313 NLRB 452 (1993), relied on by the judge here, the Board found that a decision to close a laboratory, lay off employees, and transfer their work to employees in another laboratory was a mandatory subject of bargaining. In so finding, the Board rejected the judge's application of *Dubuque* in that case, stating that "a shift of work from a group of employees in one building on an employer's corporate premises to a group of employees in another employer-owned building at the same site is not the kind of relocation which we dealt with in *Dubuque*." 313 NLRB at 453. Relying on *Holmes & Narver*, 309 NLRB 146, 147 (1992), the Board further stated that "it is unnecessary to engage in the *Dubuque* multistep analysis to justify the conclusion that a decision in this category is a mandatory subject of bargaining." Id. See also *Kajima,* supra, slip op. at 17 (unnecessary to engage in *Dubuque* multistep analysis regarding "lack of available work layoff" decision). We find that the Respondent's decisions at issue in this case are akin to those in *Kajima, Westinghouse*, and *Holmes & Narver*, and that it is therefore unnecessary to engage in a *Dubuque* analysis to justify the conclusion that the Respondent's decisions are mandatory subjects of bargaining. Accordingly, we agree with the judge that the Respondent violated Sec. 8(a)(5) and (1) by suspending operations at plant #3 and laying off employees without giving the Union notice and opportunity to bargain over the decisions or the effects of those decisions on unit employees.

[1] A first complaint issued on November 29, 1996, in Case 7–CA–39049, and was amended on January 2, 1997, to include the charge in Case 7–CA–39150, and again on February 12, 1997, to include the charge in Case 7–CA–39276. The complaint was then, as stated, amended a third time to include the charge in Case 7–CA–39472 (see GC Exhs. 1[e], [j], [o], and [v]).

Hereinafter, for ease of reference, the General Counsel's exhibits are identified as "GC Exh.," and Respondent's exhibits as "R. Exh.," fol-

sion, SPX Corporation (referred to as the Respondent or Contech Division) had engaged in conduct violative of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). On April 11, 1997, the Respondent filed an answer admitting some of the allegations, but denying that it had engaged in any unlawful conduct (GC Exh.1[x]).

A hearing in the above matter was held before me in Dowagiac, Michigan, between August 11–13, 1997, at which all parties were afforded a full opportunity to appear, to call and examine witnesses, to submit oral and written evidence, and to argue orally on the record. On the basis of the entire record in this proceeding, including my observation of the demeanor of the witnesses, and having fully considered briefs filed by the General Counsel, the Respondent, and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Dowagiac, Michigan, is engaged in the manufacture and nonretail sales of automotive parts. During the calendar year ending December 31, 1996, a representative period, the Respondent, in the course and conduct of its business operations, sold and shipped from its Dowagiac facility goods valued in excess of $50,000 directly to customers located outside the State of Michigan. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It further admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Issues

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by telling employee Kevin Whiteoak[2] that employee organizing efforts were futile as it would never bargain with the Union; and by threatening to withhold a promised wage increase from employee Shirley Stroud because of employee union activities. It also alleges that Respondent violated Section 8(a)(3) and (1) by denying Stroud her wage increase, and by laying off approximately 80 employees in response to their union activities. Finally, the complaint further alleges that Respondent violated Section 8(a)(5) and (1) by closing its Dowagiac plant #3, and laying off all employees at that facility and at its remaining plant #1, without giving the Union prior notice of, or an opportunity to bargain over, that decision and over the effects of that decision on the bargaining unit employees it represents, and by failing to provide the Union with relevant and necessary information.

lowed by the exhibit number. Reference to arguments contained in the parties' posttrial briefs are cited as "GCB," for the General Counsel's brief, "RB" for Respondent's brief, and "CPB" for the Charging Party's brief, followed by the brief page number(s). Specific testimony is cited by the transcript (Tr.) page number(s).

[2] Whiteoak also served as the Union's local president. He was laid off from his tool-and-die maker position at plant # 3 in February 1997.

B. Factual Background

1. Respondent's operations

Contech Division is one of seven divisions that make up the SPX Corporation, which is headquartered in Muskegon, Michigan. Contech Division itself operates five plants all of which in one form or another are engaged in the production of die-casting components, such as steering column parts and rack-and-pinion housing, for the automotive industry. The two involved in this proceeding, plant #1 and plant #3, are, as noted, located in Dowagiac, Michigan. The others are located in Auburn and Mishawaka, Indiana, and Alma, Michigan. Among Respondent's biggest clients are the Big Three automobile manufacturers (e.g., GM, Ford, Chrysler) and TRW Automotive.[3] It also has smaller clients such as Automotive Products.

Plant #1 and plant #3 are 400 yards apart and separated by a parking lot. Although both perform essentially the same function, plant #1is the larger of the two, measuring approximately 157,000 square feet, compared to 55,000 square feet for plant #3 (see R. Exh. 33, p. 6). Plant #1 houses some administrative offices, 4 furnaces, some 20 other machines, and a complement of some 200–250 employees. Plant #3 housed 2 furnaces, 14 machines, and had a complement of about 120 employees prior to layoffs which began in late 1996. Both plants engaged in the same die-cast manufacturing process utilizing "hot" and/or "cold" chamber die cast systems, which essentially involved pouring molten metal from a holding furnace into a "cold chamber," from which the metal was then piston-forced into the die to create the automobile part. The plants, however, used, different metals in the production process. Plant #3, for example, used a "413" European-type of metal to manufacture the TRW/Volkswagen parts. The furnaces in plant #1, on the other hand, used a "380" American-standard type of metal. During the relevant time period , both plants were run by Respondent's director of operations, Brad Farver, an admitted 2(11) supervisor.

2. The arrival of the Union

On November 14, 1994, the Union petitioned for an election with the Board seeking to represent for purposes of collective bargaining certain of Respondent's employees in an appropriate unit.[4] On August 5, 1996, following a Board-conducted election, the Union was certified by the Board as the exclusive collective-bargaining representative of all employees in the

[3] TRW parts for Volkswagen were manufactured at Respondent's plant # 3. Plant # 3 also manufactured Chrysler parts.

[4] The appropriate unit consists of "All production and maintenance employees employed by the Employer at its facilities located at 51241 M-51 North, Dowagiac, Michigan, but excluding all other employees, including all office clerical employees, guards, and supervisors as defined in the Act."

The Union lost the first election held January 12, 1995. However, following objections to the election filed by the Union, the Board on December 12, 1995, set aside that election and ordered a new one held. *SPX Corp.*, 320 NLRB 219 (1995). Thus, the Board found merit to the Union's claim that the Respondent engaged in objectionable conduct warranting setting aside the election by, inter alia, predicting to employees that a Union win at the January 12, 1995 election would cause the Respondent to lose customers and might result in plant closures.

petitioned-for bargaining unit (GC Exh. 5). Soon thereafter, on August 29, 1996, the Union's International representative, William Webster, sought to initiate bargaining on a collective-bargaining agreement by asking Respondent to provide it with dates when it might be available to do so. By letter dated September 30, 1996, the Respondent, through legal counsel, responded that it did not recognize the Union and would therefore not engage in any negotiations with it (R. Exh. 14). The Union then filed a charge on October 4, 1996, upon which a complaint was issued alleging that Respondent's refusal to bargain was violative of Section 8(a)(5) and (1) of the Act. In a Decision and Order dated December 9, 1996 (322 NLRB No. 11) (not reported in Board volumes), the Board agreed and directed the Respondent to bargain, on request, with the Union (GC Exh. 6). The Respondent has declined to abide by the Board's Order and has appealed for relief to a Sixth Circuit U.S. Court of Appeals. As of the date of the hearing, the Sixth Circuit had not yet ruled on Respondent's appeal.

3. The decision to consolidate operations

In January 1996, John Blystone was named CEO for SPX Corporation. Seeking to stem a decline in SPX's market share, Blystone introduced and implemented a concept and practice known as "Economic Value Added" (EVA), which, briefly stated, called for an assessment of SPX's operating profits, taxes, and capital charges to arrive at its true profitability. Under that system, each of SPX's divisions and/or plants was rated on their potential for growth. If a problematic division or plant was found capable of being "fixed," e.g., made profitable, it would be further capitalized or, in other words, "fixed." However, if a division or plant was not capable of being "fixed," it would be sold. Farver testified that pursuant to Blystone's policy, two of SPX's divisions—High Lift Division and CF Power Division—were indeed sold in late 1996 and early 1997 (Tr. 226). Blystone, according to Farver, had reservations as to the viability of Contech-Dowagiac as a growth division, but was persuaded otherwise by Division President Gary Walker. Walker was nevertheless expected, pursuant to a directive from Blystone, to achieve a 15-percent growth per year for the Contech-Dowagiac division, with instructions to increase annual sales from $150 million in 1997 to $250 million by the year 2001.[5]

In response to Blystone's directive, Respondent began an assessment of its overall strengths and weaknesses which included a review of which equipment and customer bases were the most profitable and which were not, and devised ways to improve its manufacturing process as well as its margin line. The Respondent, for example, automated some of its processes and also sought pricing relief or price increases from customers Ford Connersville and Bendix Corporation. Its attempt to obtain pricing relief was not successful.[6] In fact, in October 1996, Ford Connersville withdrew its business from Respondent, causing a loss of some 30–40 jobs at plant #1. Bendix likewise withdrew certain work from Respondent and moved it to Mexico, resulting in a loss of another eight jobs at plant #1 (Tr. 253–256).

In addition to losing the Ford Connersville and Bendix accounts, in mid-1996, TRW informed Respondent that it would be withdrawing its Volkswagen "413" work as of June 1997 because it had lost that Volkswagen account.[7] The loss of the TRW "413" work affected some 45–50 jobs at plant #3 (Tr. 257). Farver testified that after losing the Ford Connersville and Bendix accounts, and the TRW "413" work, the Respondent made a decision to consolidate the operations of both facilities under one roof, to wit, plant #1, and to suspend operations at plant #3. That decision, Farver claims, was consistent with Blystone's directive to Walker, and Walker's assurance to the latter, to make Contech-Dowagiac a profitable operation. Farver explained that combining both operations into plant #1 made economic sense given its larger size, and that the consolidation would result in savings for Respondent because of reduced gas energy costs, inventory costs, electrical costs, as well as lower direct and indirect labor costs (Tr. 260–262). Employees were informed of the loss of the TRW "413" work, and the Ford and Bendix accounts, at employee meetings held in September 1996, and were further told of Respondent's decision to suspend operations at plant #3 and that layoffs would be conducted.

The Respondent began implementing its decision in the fall 1996 by moving machinery from plant #3 to plant #1. Thus, following the loss of the Ford Connersville work, the Respondent sold the plant #1 machinery used to service that account to accommodate the machines being transferred there from plant #3. The first layoffs occurred around this time and affected mainly plant #1 employees impacted by the loss of the Ford and Bendix work. However, after plant #3's machinery was shifted to plant #1, employees laid off from plant #1 were recalled to operate that machinery. The layoff of plant #3 employees began around this time and continued through the end of June 1997. The laid off plant #3 employees were precluded from bumping into jobs at plant #1 pursuant to a company rule requiring employees laid-off at one facility to wait 6 months before being allowed to bump into positions at the other facility.

The record reflects that on June 1, 1997, almost 1 month before operations at plant #3 were fully suspended, the Respondent received additional "413" work from TRW which was expected to last for more than a year, e.g., until October 1998 (Tr. 245). The Respondent readily admits that plant #1 was not prepared to perform that work, and that it was forced to restart one of the plant #3 furnaces. At the hearing, Farver testified that Respondent intended to keep the plant #3 furnace operational for "another two weeks," by which time it anticipated

[5] Farver's testimony's regarding Blystone's introduction of the EVA concept and its applicability to all of SPX's divisions, was uncontradicted and is credited.

[6] The Respondent, Farver claims, was losing money on its Ford Connersville and Bendix work which is why it sought price relief from those customers.

[7] The Respondent also performed other non-Volkswagen work for TRW. TRW in turn sold them to the Volkswagen corporation. This work is identified in the record as the "413" work, a reference to the type of metal (aluminum) used in production. Respondent, however, also produced other "413" work for TRW unrelated to the Volkswagen account.

having installed a new furnace at plant #1 to continue the "413" work that was partially being done at plant #3.

Although the General Counsel contends that Respondent has permanently closed plant #3, the Respondent argues, and the record would seem to bear out, that plant #3 has not been closed, and that it has only suspended operations at the facility until such time as it is able to secure enough work to resume operations (Tr. 318, 330, 338). A June 1996 "Long Range Forecast" summary prepared by Respondent's sales department tends to support its claim for it reveals that Respondent anticipated the "TRW business [would be] moved back to plant #3 by 1999" (GC Exh. 20). Other than Whiteoak's and Tolliver's testimony that Farver told employees at the September meeting that plant #3 was closing, which testimony as discussed infra was not very credible, the General Counsel produced no evidence to support his contention that Respondent had indeed permanently shut down that facility. Thus, I find that plant #3 has not been permanently closed, and that Respondent has instead only indefinitely suspended operations at that facility.

4. The Union is notified of the layoffs and requests information

By letter dated on October 21, 1996, Farver notified the Union of Respondent's decision to reduce its work force, noting therein, however, that he was doing so notwithstanding that Respondent did not recognize the Union as the bargaining representative of its employees (GC Exh. 7). The letter identifies the affected employees by name, position, and title, and further advises that additional layoffs might be necessary in the near future. Similar letters were again sent by Farver on October 28 and November 5, 1996, advising of further layoffs (GC Exhs. 8, 9). In each case, Farver instructed the Union to contact Respondent's director of human resources, Kord Kozma, for further information.

By letter dated November 8, 1996, Union International Representative William Webster responded that Respondent was in violation of "the labor laws . . . by refusing to bargain with us on the impact these will have on 'our membership.'" Webster further informed Farver that he had attempted to contact Kozma, as Farver had suggested in his letters, some 10 times but was unable to reach him, and that Kozma had failed to return his calls (GC Exh. 10).[8]

On December 20, 1996, Whiteoak forwarded a written request to Respondent seeking the following information: An accurate list of hourly employees currently on layoff; their layoff dates, job titles or positions, the departments from which they were laid off; any bump requests they may have submitted to Respondent; the status of any employee who exercised their bump rights regardless of whether they qualified; the reason for any disqualification if such disqualification occurred and the identity of the individual who disqualified the employee (see attachment to GC Exh. 1[v]). Receiving no response, Whiteoak sent another written request on February 14, 1997, requesting the above information as well as a seniority list of all hourly employees, regardless of whether they were on active, laid-off, disabled, or retired status (GC Exh. 1[x], par. 23). The Respondent admits it has not complied with the information request.

5. The employee meetings

The Respondent, as stated previously, held meetings with employees beginning September 1996, to inform them of the state of its operations and the loss of the above accounts, and to inform them that both plants were being consolidated under one roof, e.g., plant #1, and that layoffs would be occurring.[9] The layoffs, as further noted, began soon after the meetings (Tr. 308, 310). Whiteoak gave testimony regarding statements he claims were made by Farver during two meetings held in late November 1996 and on January 30, 1997. He further testified to comments allegedly made by Kozma at a March 1996 employee recognition dinner.

As to the November 1996 meeting, Whiteoak recalls it taking place in a plant #3 employee breakroom, and Farver basically opening the meeting by telling employees that due to a lack of business at plant #1 and the phasing out of the TRW work at plant #3, Respondent had decided move all work from plant #3 to plant #1, and to shut down plant #3. Regarding the January 1997 employee meeting, Whiteoak recalls it being attended by five or six members of management, including Farver, and possibly Human Resources Manager Steve Nuñez. He recalls Farver repeating that plant #3 was closing down and stating the reasons therefore, and telling employees that a transition team was being made available to help displaced employees find other work. Whiteoak claims that he questioned Farver "about the validity of what [Respondent] was doing," and told him that since the Union had won the election and been certified by the Board, the consolidation of both plants and closure of plant #3 was a matter that should have been bargained over and not undertaken unilaterally. Farver purportedly responded that Whiteoak "was out of line" and that if Whiteoak wished to speak with him, he should do so privately. Whiteoak claims to have responded that he "and a couple of my cohorts . . . would have no trouble at all sitting down and talking with [Farver] in length about anything he wanted to." Farver, according to Whiteoak, replied that neither "he nor Contech would ever negotiate with UAW or [Whiteoak]" (Tr. 102–103).

Called by the General Counsel, former employee John Tolliver testified to being at the January 30, 1997 meeting, and recalls the meeting involved a discussion of the closing of plant #3, and of the transition team that Respondent was providing. Tolliver claims that at some point during the meeting, he heard Whiteoak tell Farver that "sooner or later, he and Contech would have to talk to him [Whiteoak] and the UAW," and heard Farver reply, "I'll never talk to you Kevin; and I'll never talk to the UAW" (Tr. 37). Tolliver, who had worked for Respondent since September 1988, was also laid off in February 1997.

Farver agrees with Whiteoak and Tolliver as to the subject matter of the January 30, 1997 meeting, but denies ever telling Whiteoak that neither he (Farver) nor Contech would ever bar-

[8] Kozma was no longer employed by Respondent at the time of the hearing.

[9] The Respondent routinely held employee meetings during the fall and spring each year.

gain with the Union. He does, however, recall that soon after the meeting began, Whiteoak began interrupting him with questions on union-related matters. He claims to have told Whiteoak that he wanted to stay focused on the meeting, and further recalls telling Whiteoak, when the latter continued with his interruptions, that the meeting was not the time and place to discuss the union issues, and that he (Farver) would be willing to do so in private after the meeting (Tr. 283).

Nuñez, who was present at the January 30, 1997 meeting, testified, consistent with Farver, that during the meeting Whiteoak directed several questions at Farver unrelated to what was being discussed, and that Farver told Whiteoak the meeting was not the proper forum for addressing his questions, but that he would be willing to meet with Whiteoak after the meeting or at another time to discuss his concerns. Nuñez denied hearing Farver make any reference to collective bargaining at that meeting, or hearing him tell Whiteoak that neither he (Farver) nor Contech would ever bargain with the Union (Tr. 442–443).

Former employee Dan Sansom, who worked as a die cast group leader at plant #3 before being laid off sometime prior to July 1997, testified that he too attended the January 30, 1997 meeting. While he admittedly recalled little of what was said at that meeting, Sansom testified that he did not hear Farver make the "will not bargain with the Union" remarks attributed to him by Whiteoak and Tolliver (Tr. 349).

Regarding the March 1996 dinner, Whiteoak testified it was attended by some 80 individuals that included employees, retirees, and members of management, and that at some point during the dinner, Kozma read a prepared statement from Walker to the attendees.[10] Whiteoak claims that before reading the letter, Kozma remarked he would be reading it "word for word because of the legal ramifications with the Union president (Whiteoak) present." According to Whiteoak, among the remarks contained in the letter as read by Kozma was a comment that Contech was not "performing up to snuff, and that if things did not improve certain measures would have to be taken." Kozma is further alleged to have read, as per Whiteoak's testimony, that Contech planned to "fight decertification of the UAW tooth and nail, until the end, until there was no other means to fight it" and that "Contech was non-union and intended to remain non-union." Kozma, again purportedly reading from the Walker letter, mentioned that those employees "who voted against the Union . . . were considered part of the Contech family, and that the people that voted yes were kind of outcasts, and not in the majority." (Tr. 62.) Kozma admits reading the Walker letter aloud to the attendees at the dinner, but denies that the reading included the remarks attributed to him by Whiteoak (Tr. 375–376).

6. The employee handbooks

In September 1996, the Respondent issued a handbook (the "White handbook") for employees at Contech-Dowagiac (GC Exh. 14). The white book in fact was intended to supplement a division-wide employee handbook that was issued around the same time (GC Exh. 13), and applicable only to Dowagiac employees. Nuñez, who issued the handbook, testified that it was intended to replace all prior existing handbooks and to incorporate all existing policies and practices then currently in place at Contech-Dowagiac. The handbook effectively rendered obsolete a 1989 Dowagiac employee handbook referred to as the "Yellow" book (R. Exh.1), and a "Green" handbook issued in 1994 labeled an "Information Guide" for "factory/salaried employees (GC Exh. 12). It also was intended to incorporate some 1992 changes made in, inter alia, employee bump-back procedures, which went into effect January 1, 1993.

As to the 1992 changes, Respondent's project manager and community facilitator, John Lee, testified, credibly and without contradiction, that prior to 1992, employees laid off from one plant, e.g., plant #1, were allowed to immediately bump into a position at the other plant (Tr. 478). That practice, he further testified, proved chaotic, and led employees to complain to management. As a result, during the fall 1992 employee meetings, and pursuant to a consensus vote of employees, the Respondent agreed to change the practice so that employees laid off from one facility would henceforth have to wait 6 months before exercising their right to bump into the other facility. Lee, who has worked for Respondent for some 29 years, also testified that for as long as he could recall, the practice has been that a laid-off employee seeking to bump a less senior employee had 3 days in which to qualify for the position, and that the further practice was for employees in other classifications to bump into the production classification (Tr. 482–483). Company documents corroborate Lee's testimony as to the existence of the 6-month bump-back rule and the 3-day qualification

[10] While the Walker letter was not produced, a videotape recording of Kozma reading the letter aloud was received into evidence as R. Exh. 15. A transcription of what Kozma read aloud follows:

> I want to thank each of you [the honorees] for your years of effort, your effort in partnership with [inaudible] has allowed Contech-Dowagiac to be successful for many years. To the current Dowagiac employees, I must convey my deepest disappointment. I have worked for over 20 years to keep the lines of communication open between managers and people who do the work. Obviously, many of you felt that I have been unsuccessful because on March 13, the people of Dowagiac spoke. You said that you wanted someone to do your talking for you. You said you needed protection from a hostile leadership who cares only about themselves and not about you. You said you despised managers past and present. I'm sorry you feel that way. To each of you, I apologize because I was the leader who allowed those feelings to develop.
>
> To the 150 people who voted to remain free of Union interference, I assure you that you did the right thing. You recognize that Contech-Dowagiac suffers from the same ills as many industrial companies undergoing the changes necessary to survive. You encouraged and trusted your leaders to do the right thing. Brad and the rest of the management team have tried desperately to find the solutions to Dowagiac's problems. In the end, we cannot satisfy individual needs while satisfying the needs of a business. As we searched to find the answers, you were with us trying to find the answers too. For this I thank you all. Despite losing the battle on March 13, we have not lost the war. Let me be perfectly clear. We intend to continue to fight, to take all necessary steps to position Dowagiac to be a positive contributor to the success [inaudible] for the rest of the corporation. No other outcome will be acceptable. I end this with a wish: May our dreams be more powerful than our memories of the past.

period before the Union arrived on the scene in November 1994 (R. Exh .19).[11]

On August 1,1994, the Respondent, as noted, issued an "Information Guide" or green book. Among the provisions contained therein was one giving laid-off employees who wished to bump into a new position a 5-day period in which to qualify for the job (GC Exh. 12, p. 20). The green book contained no reference to the 6-month bump-back policy. James Dybevik, who served as Respondent's human resources manager for several years and who at the time of the hearing was no longer in its employ, recalled that the green book was intended to replace the 1989 yellow book and to be made applicable to all of Respondent's employees, but that after being issued and distributed to employees in the fall of 1994, the Respondent "pulled" the green book and reverted to the policies and practices of the yellow book, with any subsequent modifications that had been made to it (Tr. 157, 167). Dybevik explained that it was Walker who instructed that the green book be pulled and who directed that Respondent revert to the policies and practices contained in the 1989 yellow book. The green book, Dybevik pointed out, had not been well received by employees as it was vague and the policies set forth therein not fully explained. He admits, however, that to his knowledge employees were never told that the 1994 green book was no longer in effect (Tr. 162).[12] Kozma testified that the green book was intended as an "umbrella document supported by policies and procedures at each of our facilities." However, in agreement with Dybevik, he testified that Respondent pulled the green book because "the policies and procedures at the facilities hadn't been fully developed," and that Respondent continued operating "on the policies and procedures of past and current practices" (Tr. 372–373).

The Respondent avers that "[t]he [White] handbook . . . was needed to put into one document the practice and procedures that existed prior to the filing [by the Union] of the [representation] petition in November 1995" (RB: 34). Unlike the green book, and consistent with the bump-back policy that went in to effect on January 1, 1993, the white book gives laid-off employees immediate bumping rights to his or her 'home" plant, and the right to bump into a plant other than their home plant after 6 months of indefinite layoff (GC Exh. 14, pp. 13–14). The white book also contained the following "classification bumping" language: "*production class may only bump production class, Support class may only bump support class, and Skilled class may only bump skilled class of equal or lower pay grade*." (Emphasis added.) As to the qualification period, the white book provides, contrary to the provision in the 1994 green book, that laid off employees exercising their right to bump had "three (3) days to meet the requirements of the displaced persons job. Should performance be unsatisfactory, the employee is returned to layoff status with no further displacement rights."[13]

Nuñez testified that soon after the white book issued, employees reported to him that the above-emphasized "classification bumping" language was wrong and inconsistent with Respondent's past practice, and that he confirmed the accuracy of the employee complaints by consulting with other managers and supervisors. He concluded from such conversations that the correct procedure was that contained in the 1989 yellow employee handbook. To remedy the problem, Nuñez issued a memo on October 17, 1996 (GC Exh. 15), replacing the above-emphasized language with the following:

> Anyone on indefinite layoff may exercise service to displace the least service person of equal or lower pay in a production classification, except machining classification employee may displace less service punch press classification personnel.

The language, as previously noted, mirrors that found in the 1989 yellow handbook. However, in his October 1996 memo Nuñez wrongly interpreted the above language to mean that "Production class may only bump production class, support class may only bump support and production class, and skilled class may bump skilled, support and production class, of equal or lower pay grade."

Nuñez heard nothing further on his memo until Respondent was served with an unfair labor practice charge alleging, inter alia, it had unilaterally changed its bump-back policy. Nuñez claims he then renewed his investigation and learned from 1980 memos prepared by a predecessor, Al Lehman, that the interpretation he had given to the bump-back language in his October 17 memo was wrong. After some further inquiry, Nuñez prepared and posted another memo for employees on June 27, 1997,[14] wherein he admitted that the bump-back policy had been incorrectly interpreted in his prior October 1996 memo, and set forth the following interpretation: "Any laid off employee may only bump into a production classification and may only bump the one least senior production employee in the same or lower pay grade" (GC Exh. 18).

7. Shirley Stroud's wage increase

Stroud worked for Respondent from June 1977 until laid off in June 1997. When laid off, Stroud held the position of union

[11] R. Exh. 9 is a copy of one of several overheads used by Respondent to notify employees during the fall 1992 meetings of the change in the bump-back rule. In addition to announcing the new bump-back rule, the overhead states that the "bump back qualification period of (3) days will remain the same per the handbook."

[12] Nuñez, however, credibly explained that information regarding changes in policies and practices are communicated to employees during yearly spring and fall employee meetings (Tr. 382). Presumably, therefore, employees did receive general notification that the green book was not being implemented.

[13] The language in the 1996 white book about employees being returned to layoff status without any further displacement rights should they not satisfy the 3-day requirement is not found in the 1994 green book, but was part of the 1989 yellow book. Also not found in the 1994 green book is the "classification bumping" language that, as noted infra, was mistakenly inserted in the white book.

[14] While prepared sometime in February 1997, Nuñez did not post the new memo until June 1997. He explained that the 4-month delay in posting was attributed to the fact that Respondent's counsel had sought advice from the General Counsel as to whether the interpretation given the bump-back language in the prepared June 1997 memo was correct. Only when such assurances were received from the General Counsel did Respondent proceed to post the memo (Tr. 474).

financial secretary.[15] The record reflects that after working at various positions, Stroud, in 1994, was promoted to the position of quality auditor, and advised that within 1 year, she was required to take and pass a certified mechanical experience (CMI) course. On October 2, 1995, Stroud received a 2-percent merit wage increase bringing her hourly wage rate to $13.50 per hour. She testified that on enrolling in the CMI course, her instructor, Jeff Sharp,[16] told those in attendance they would receive a 50-cent raise on completion of the course and on passing the required certification test. Stroud completed the course in February 1996, and passed the CMI certification exam on March 2, 1996. On passing the exam, Stroud claims she and others were told that when they received their certificates, they should take it to the human resources after which they would get their raise. Although she did receive a raise in April 1996, Stroud received only a 29-cent raise, rather than the 50-cent raise to which she claims she was entitled.

Stroud claims she questioned her supervisor, Ila Aurand, about the shortage, but that the latter had no explanation, and suggested she speak with plant quality manager, Kevin Case.[17] According to Stroud, Case, like Aurand, could not provide her with an answer, and suggested she speak with someone at human resources. Stroud claims she then spoke with Nuñez, who purportedly told her he did not know why she did not receive the 50-cent raise, but that Respondent had recently implemented a new top rate of $13.79 for the quality auditor position, and that since Stroud had previously been earning $13.50, she could receive no more than a 29-cent increase to bring her to the job classification's next "position value" of $13.79.[18] Stroud objected to Nuñez' explanation stating that she knew of at least two employees—Wanda Carlisle and Barbara Singleton—who purportedly were earning more than the top rate (Tr. 199–200).

Nuñez was not asked about the alleged conversation Stroud claims she had with him. He did, however, testify to the various types of wage increases generally awarded to employees. Employees, for example, may receive an annual merit increase similar to the 2-percent merit increase awarded to Stroud in October 1995, and/or a progressive increase, presumably based on longevity. In addition to the above, employees may also be eligible for a wage increase on successful completion of a CMI certification, as was Stroud. Nuñez, however, further testified that while the CMI certification-based wage increase is generally 50 cents, Respondent's longstanding policy has been that no progressive-type raise, or one resulting from a CMI certification, can be such as to exceed an employee's next "position value" for a job classification (Tr. 422; also, R. Exh. 3). Annual merit increases, on the other hand, have no such restriction and an employee may be awarded one that exceeds the position value of a particular classification. According to Nuñez, because Stroud was earning $13.50 per hour as a quality auditor prior to obtaining CMI certification, her next "position value" was set for $13.79 (GC Exh. 19, R. Exh. 3). Thus, Nuñez claims that when Stroud became certified, she could only have received, in accordance with Respondent's policy, a 29-cent increase to prevent her from exceeding the $13.79 "position value."

Stroud testified that within a day or so of meeting with Nuñez, she spoke with Farver who gave her the same explanation as Nuñez for why she only received a 29-cent raise. Stroud protested that she had been assured at the start of the CMI class that she would be receiving a 50-cent raise, and that "some [employees] did and some didn't." Farver advised Stroud there was nothing he could do, and when Stroud asked to speak to someone higher up, Farver responded, "You can do that. That's really up to you, but there isn't anything we can do right now." Farver was not asked about this alleged conversation with Stroud.

Stroud claims she then contacted Blystone who assured her he would speak to Walker about the matter. That same day, Stroud was contacted by Kozma who purportedly told her "as soon as this is over with, between the Union and the Labor Board, that they would try to figure out what had happened with people making a higher wage and other people making a lower wage." Kozma, according to Stroud, did not agree with the way the merit system was set up, but told her "there wasn't anything he could do at that time; his hands were tied." Asked if Kozma explained why his hands were tied, Stroud answered it was "because a dispute with the Labor Board and the Union was in Washington at the time and he couldn't make any changes." Stroud claims that she spoke with several women at union meetings, namely Diane Sloan, Anita Beach, Sheila Anders, and Barb Singleton, all of whom told her they were earning above the $13.79 position value (Tr. 202–204).

Kozma recalled having a conversation with Stroud over the wage increase. He claims Stroud was upset over receiving less than a 50-cent increase, and mentioned to him that other employees were earning more than their "position value." Kozma agreed with Stroud that others were indeed above the earnings ceiling. He explained that under Respondent's then payroll system and practice, employees could receive merit increases that put them above the top rate or "ceiling," but that employees were not permitted to exceed the top rate when receiving a wage increase based on a CMI certification. This practice, according to Kozma, was put into effect during the time that he was still employed by Respondent (Tr. 375). Kozma claims he agreed with Stroud that Respondent's current payroll system or practice "wasn't the fairest way in the world" but that Respondent intended to maintain the status quo, e.g., not change any of its policies or procedures, until after the "labor situation" was resolved through the appeal process (Tr. 375).

Thus, while Kozma confirms telling Stroud that he did not agree with the current pay system, Kozma's version differs from Stroud's on exactly what he may have said to her. For example, while Stroud claims Kozma told her he would try to "figure out what had happened with people making a higher

[15] In March 1995, Stroud testified for the Union at the objections hearing which formed the basis for the Board's decision in 320 NLRB 219, referenced in fn. 4, supra.

[16] Sharp's status was not established at the hearing.

[17] Neither Aurand nor Case testified at the hearing.

[18] R. Exh. 3 is a document entitled "1994 Salary Ranges" listing the minimum, midpoint, and maximum range, or "position value" as described by Nuñez, for each job classification. The midpoint position value for a quality auditor/CMI, Stroud's position, is shown to be $13.79.

wage and other people making a lower wage" after the matter "with the Union and Labor Board" was over, Kozma's account contains no reference to the Union or any mention of his agreement to look into discrepancies in the wages being paid to employees. As between the two, I found Kozma to be the more credible and am convinced he simply told Stroud that her pay raise was consistent with Respondent's current practice, and that Respondent would not be making any changes in any of its policies, including its payroll system, until after its appeal of the certification was concluded.

C. Discussion and Findings

1. The alleged 8(a)(1) conduct

The complaint alleges, and the General Counsel contends, that Respondent violated Section 8(a)(1) when, at the January 30, 1997 employee meeting, Farver purportedly told Whiteoak that Respondent would never bargain with either Whiteoak or the Union. Farver, as noted, denies making any such remark. I found Farver generally to be a credible witness and am convinced he testified in an honest and straightforward manner. Whiteoak, on the other hand, was anything but convincing. For example, his testimony as to the contents of the Walker letter read by Kozma at the March 16 letter is patently false, for not only is it refuted by Kozma, himself a credible witness, but also by the videotape itself (see fn. 10, supra; R. Exh. 15), which shows that Kozma never made the comments nor read the remarks attributed to him by Whiteoak. Thus, Kozma never stated he was reading the Walker letter aloud "word for word" because Whiteoak was present at the meeting, nor did he make any antiunion remarks.[19] Whiteoak also was not being truthful when he claimed that Respondent distributed the 1994 green book to employees only after the Union petitioned for an election in November 1994. The record reflects that he signed off as having received his copy of the green book in June 1994, months before the petition was filed (R. Exh. 31). While there is no way of knowing if Whiteoak was intentionally being deceptive, given his patently false testimony as to the comments purportedly made by Kozma during the March 1996 dinner, I suspect Whiteoak knew full well when the green book was distributed but chose to lie about it.

While Tolliver testified that he too heard Farver make the remarks attributed to him by Whitehead, I was unpersuaded by his testimony. Thus, while Tolliver claims Whitehead told Farver the latter would "sooner or later" have to talk to him and the Union, Whitehead never testified to having made said comment, leading me to doubt Tolliver's claim as to what he might have heard. Farver's denial of such remarks, on the other hand, was corroborated by Nuñez and former employee Sansom, the latter a clearly disinterested witness. In sum, I find no credible evidence to support this particular complaint allegation and shall, accordingly, recommend its dismissal.

2. The alleged 8(a)(3) conduct

a. Shirley Stroud's wage increase

The General Counsel contends that Respondent's failure to grant Stroud a full 50-cent-per-hour increase allegedly promised her for completing her CMI certification was motivated by antiunion considerations and violates Section 8(a)(3) and (1) of the Act. The Respondent denies the allegation and contends that the grant of only a 29-cent increase to Stroud was consistent with company policy. Resolution of this issue requires application of the causation test set forth by the Board in *Wright Line*, 251 NLRB 1083 (1980).

Under *Wright Line*, the General Counsel bears the initial burden of showing that the adverse action taken against an employee, here the alleged denial of a full increase, was motivated, at least in part, by the employee's union or other protected concerted activity. To make out a prima facie case, the General Counsel must show the affected employee engaged in union or other protected activity, that the employer was fully aware or had reason to believe that the employee had engaged in such activity, and that it harbored antiunion animus. Should the General Counsel succeed in establishing a prima facie case, the burden then shifts to the employer to show that it would have acted in the same manner even if the employee had not engaged in any protected activity.

The General Counsel, I find, has not made out a prima facie case. While the record reflects that at the time of her June 1997 layoff Stroud held the position of union financial secretary (Tr. 205), the record does not make clear when she assumed that position. Thus, it is not known if Stroud held that position in April 1996, when she allegedly was denied a full 50-cent increase. Nor, even if she held that position in April 1996, is there evidence that Respondent knew back then of her position with the Union (Tr. 199).[20] The only evidence of Respondent's knowledge of Stroud's prounion sympathies is a "Hearing Officer's Report and Recommendations on Objections" that issued

[19] Contrary to the General Counsel's assertion on brief (p. 22), the Walker letter does not strike me as reflecting union animus on the part of Respondent. While Walker's comment about losing the battle was an obvious reference to Respondent's loss of the Board election, his further comment about not yet having lost the war could simply have been a reference to the fact that Respondent intended to continue in its efforts to challenge through legal means the results of that election and to have the Union's certification set aside by the courts. When read as a whole, the letter expresses nothing more than Walker's disappointment that employees chose to be represented by the Union, and his view that Respondent intended to continue to fight to make Contech-Dowagiac a profitable operation for itself and the corporation as a whole. The General Counsel's attempt to give some other reading to the letter by quoting on brief only a portion and certain "snippets" of the Walker letter is not only unpersuasive but also, in my view, somewhat misleading.

[20] The Charging Party, on brief (p. 2), avers that "as the financial secretary of UAW Local 3136, and through her prior activities, [Stroud's] support for the Union was well known." It does not explain what "prior activities" Stroud may have engaged in that would have come to the Respondent's attention. There is, as noted, no evidence to show that Stroud was the Union's financial secretary in April 1996, or, if she was, that Respondent had knowledge of it. While it is reasonable to believe, given her willingness to accept the position of Union financial secretary, that Stroud was an active union supporter, that fact alone is insufficient to impute knowledge of her activities to the Respondent. As noted, the only evidence of record supporting a finding of knowledge on Respondent's part of Stroud's prounion sympathies derives from the fact that she testified in favor of the Union at the objections hearing in March 1995.

on April 17, 1995, following the first election conducted by the Board in January 12, 1995, which shows that Stroud testified for the Union at the March 1995 objections hearing (GC Exh. 2).[21] Thus, if any knowledge of Stroud's prounion sympathies is to be imputed to Respondent, it would have to be on the basis of her testimony at the objections hearing more than 1 year prior to the alleged denial of her wage increase in April 1996, and not based on her role as union financial secretary.

Assuming therefore that the Respondent knew, based on her testimony at the March 1995 objections hearing, of Stroud's support for the Union, evidence that Respondent harbored animus towards her or the Union is conspicuously lacking here. The only evidence cited by the General Counsel on the animus issue is Kozma's admitted remark to Stroud that Respondent did not intend to change its payroll system while its appeal of the Board's certification of the Union was pending. The General Counsel argues that Kozma's remark reveals that the Respondent was improperly trying to shift "the onus for Stroud not receiving her entire raise" on the Union, and was thereby "disparag[ing] and undermin[ing] the Charging Union by creating the impression that it stood in the way of a resolution of Stroud's dilemma" (GCB 5–6).

The General Counsel, in my view, reads too much into Kozma's remark. On its face, Kozma's remark amounts to nothing more than a reaffirmation to Stroud that her wage increase was consistent with Respondent's payroll system and practice of not permitting an employee granted a CMI certification wage increase to receive an amount that would exceed the job classification's "position value." At no time did Kozma link Stroud's failure to receive a full 50-cent raise with the advent of, or her support for, the Union. While Kozma did tell Stroud that Respondent did not intend to make changes to any of its policies or practices while its appeal of the Board's certification was pending, I do not read his comment as suggesting that Stroud would have gotten a 50-cent, rather than the 29-cent, raise but for the "pending labor dispute." Rather, I view his remark as nothing more than an expression of Respondent's unwillingness to make any unilateral change in its existing policies and practices until such time as its appeal of the Board's certification was resolved by the courts.[22]

Other than Kozma's above remarks, which I find do not reflect an antiunion attitude on the part of the Respondent, the General Counsel cites no other evidence, nor have I found any, that might reasonably support a finding of animus. Indeed, the timing of the alleged unlawful denial of the 50-cent-wage increase, more than a year after the Respondent first learned of Stroud's prounion sympathies, militates against a finding of animus. As noted, 8 months after testifying on the Union's behalf, the Respondent granted Stroud a 2-percent-merit wage increase. Clearly, if the Respondent harbored animus towards Stroud for her testimony, and was seeking to retaliate against her for supporting the Union, it more likely than not would have done so by denying or withholding the October 1995 merit increase, rather than granting it and then waiting until April 1996, some 6 months later, to take retaliatory action through the alleged denial of the full 50-cent increase. It simply defies logic to believe, particularly given Stroud's receipt of the October 1995, increase and the passage of more than a year since Respondent first learned of Stroud's prounion sympathies, that Stroud's failure to receive a full 50-cent-CMI-wage increase could have been motivated by antiunion animus. Given these circumstances, I find that the General Counsel has not shown that the Respondent harbored animus towards Stroud or, for that matter, towards the Union in general, and has therefore failed to meet his *Wright Line* burden of proof. Accordingly, dismissal of this particular allegation is warranted.

However, even if the General Counsel had been able to meet his *Wright Line* burden, the Respondent would still prevail for the credible evidence of record convinces me that Stroud would not have received a 50-cent increase even if she had not engaged in union or other protected activity. As noted, Kozma and Nuñez both testified, without contradiction, that Respondent's longstanding policy is not to grant a full 50-cent-CMI certification-based wage increase if it would put the employee receiving the increase over the "position value" for his or her job classification. Seeking to establish that Respondent had no such policy or that, if it had, the policy was either disparately applied or not at all, the General Counsel produced the wage cards of several employees which show they received wage increases that exceeded the position value (GC Exh. 19).

While General Counsel's Exhibit 19 indeed reflects that several employees in the quality auditor/CMI classification are receiving salaries that exceed their position value, there is no indication from their wage cards that they are doing so based on having received CMI certification-type wage increases. The wage cards, if anything, show that many of the employees identified there were able to exceed the position value through the receipt of merit wage increases of the kind that, as testified to by Nuñez, contain no amount restrictions. In fact, the wage cards for some of these employees show that when they received their CMI increases, the amounts given them, like Stroud's 29-cent increase, were limited to what was needed to keep them within their position value.[23] The wage cards, there-

[21] Stroud, for example, testified regarding antiunion comments made by Respondent's supervisors to her and at employee meetings, and regarding an incident where she left a piece of union literature on a lunch room table which was subsequently thrown out by a supervisor (GC Exh. 2, pp. 4, 8, 9, and 17).

[22] Given the Board's certification of the Union, the Respondent, in any event, was not free to unilaterally change its wage policy to accommodate Stroud without running afoul of the Act. Thus, I find that Kozma's remarks to Stroud do not amount to an 8(a)(1) threat to withhold a wage increase from her, as alleged in the complaint.

[23] Employee JoAnn Stockwell's wage card, for example, shows that when she received her CMI certification in May 1995, she received a 34-cent increase, rather than the usual 50-cent increase, bringing her up to the position value set at the time at $13.57 (Tr. 427, R. Exh.. 3). Another employee, Barbara Singleton, received no CMI increase because at the time she obtained her certification, her wage scale was already above the position value. Employees Anita Beach and Diane Sloan, whose cards also form part of GC Exh. 19, likewise did not receive full 50-cent increases on obtaining their CMI certification but rather what was needed to bring them up to the level of their position value. In short, the wage cards, in my view, support Respondent's position that the amount of a CMI increase cannot be such as to exceed the position value for a classification.

fore, do not support the General Counsel's and the Charging Party's claim that Stroud was treated in a disparate manner vis-à-vis other employees who received CMI certification increases.

The Charging Party also points to Stroud's testimony as to what Supervisors Aurand and Case said to her as supportive of a finding that Respondent had no such policy. Stroud, as noted, testified that Aurand and Case told her they "assumed" she would be getting a 50-cent raise, and did not know why she did not get it (Tr. 199–200). Aurand's and Case's remarks, the Charging Party suggests, establish that supervisors were never told of and were thus unaware that such a policy existed. I disagree, for even accepting as true that Aurand and Case made the remarks attributed to them by Stroud, without more such remarks do not serve to refute Respondent's claim as to the existence of the policy. There is, for example, no evidence that Aurand and/or Case knew what Stroud's hourly rate was before she became eligible for the CMI certification raise. Thus, it is quite possible that Aurand's and Case's "assumption" about Stroud receiving a 50-cent raise may likewise have been premised on the further "assumption" that her current hourly rate was such that the standard 50-cent raise would not cause her to exceed the position value for her classification. The plain fact is that there is no way of ascertaining from Stroud's testimony just what Aurand and Case meant or were thinking of when they purportedly made their comments to her, and to infer from such vague comments, as the Charging Party suggests I do, that Respondent had no rule against a CMI raise exceeding a classification's position value or that supervisors had no knowledge or were never told of such a rule, would be to engage in unwarranted speculation.

In sum, I credit Nuñez and Kozma and find that at all relevant times the Respondent maintained a policy of not granting a full 50-cent-CMI-certification increase if it would result in the certified employee exceeding the position value of his or her job classification, and that it applied this policy to Stroud when it granted her the 29-cent raise in April 1996. Their credited testimony, coupled with the wage cards showing that Stroud was treated no differently than other employees who received similar CMI raises in the past, provides convincing evidence that Stroud would not have received a full 50-cent raise even if she had not engaged in union or some other protected activity. I therefore find that the Respondent has met its *Wright Line* burden, and shall, accordingly, dismiss this allegation.

b. The employee layoffs

The General Counsel also alleges that the layoff of employees at both plants was motivated by antiunion considerations and therefore violative of Section 8(a)(3) and (1). I disagree.

Initially, the General Counsel has not made out a *Wright Line* prima facie case. The element of employer knowledge has easily been satisfied here by the General Counsel and needs little discussion. Respondent clearly knew from the results of the Board's election and subsequent certification that a majority of its employees supported the Union. The General Counsel, however, takes the knowledge question one step further, arguing that Respondent laid off more employees at plant #3 and suspended operations at that facility because it knew that the bulk of the Union's support came from employees at that facility. To support its argument, the General Counsel points to testimony by Tolliver and Whiteoak that employees at plant #3 displayed their support for the Union more openly than did employees at plant #1 by wearing union buttons, hats, and other union insignia on their clothing and tool boxes. However, as found above, neither Whiteoak nor Tolliver was a particularly credible witness, and their vague testimony regarding the extent of employee support shown for the Union at plant #1 versus plant #3 was unconvincing and likewise found not to be credible.[24] Accordingly, I find no credible evidence to support the General Counsel's claim that employee support for the Union at plant #3 was any greater than that provided or openly demonstrated by employees at plant #1, or that Respondent had reason to believe that to be the case.

I also find no evidence of antiunion animus. The only evidence cited by the General Counsel as purportedly showing animus is Whiteoak's testimony regarding the comments he claims were made by Farver to him at the January 30, 1997 employee meeting, and the Walker letter that Kozma read aloud at the March 1996 recognition dinner. However, as found above, Farver never made the remarks attributed to him by Whiteoak, and the Walker letter does not, in my view, convey any hostility or animus towards the Union. As no showing of animus has been made here, the General Counsel has failed to make out a *Wright Line* prima facie case, warranting dismissal of this allegation.

The evidence of record, in any event, supports a finding that Respondent would have conducted the layoffs even if employees had voted against union representation. Thus, the credible testimonial and documentary evidence of record makes clear that Respondent in mid to late 1996 lost three accounts, two of which (Ford Connersville and Bendix) meant a loss of work for employees at plant #1, and the third, the TRW/Volkswagen account, which caused a loss of jobs at plant #3. The General Counsel does not dispute that these three customers pulled their business from Respondent. He does, however, suggest that in suspending operations at plant #3, the Respondent was merely

[24] Tolliver, for example, testified that he personally observed about 75 percent of employees at plant #3 wear "Union buttons, T-shirts, and stickers on their toolboxes," and that while employees at plant #1 engaged in similar conduct, the number of employees engaged in such activity was not as great as that at plant #3 (Tr. 39–40). He admitted, however, that his general observations regarding the plant #1 employees occurred during visits he made to the plant #1 supply room to pick up parts, and that while there he was not permitted to walk around and talk to other plant #1 employees. Clearly, Tolliver could not have known the degree to which employees at plant #1 openly demonstrated their support for the Union since he was not permitted to tour the facility to engage in such observations. Whiteoak similarly testified that the overt support by employees for the Union at plant #3 was greater (e.g., 75–80 percent) than that demonstrated by employees at plant #1, characterizing the latter support as "much more subdued" (Tr. 81). Although Whiteoak claims he reached his above conclusions based on personal observations from occasional visits, it is not clear just how extensive those observations and visits were. I reject both Tolliver's and Whiteoak's comparisons of the degree of support shown the Union at both Dowagiac plants as unreliable.

carrying out the threats it made to employees prior to the first election in January 1995.

It is true that the Board in its earlier decision (320 NLRB 219), found that the Respondent had engaged in improper conduct by predicting it would lose customers and possibly close down its facilities should the Union prevail in the January 1996 election. However, the fact that such predictions were made does not necessarily mean that Respondent was somehow responsible for the loss of the Ford Connersville, Bendix, or TRW/Volkswagen accounts which led to the reductions in force. The General Counsel has, in this regard, made no such claim. Nor is there any evidence from which it might be argued that Respondent deliberately lost those accounts so as to justify suspending operations at plant #3. Further, from all indications, most of the jobs held by employees at plant #3 were dependent on the TRW/Volkswagen work, so that the loss of that work clearly would have caused a loss of jobs at that facility. Thus, there is no doubt in my mind, and I so find, that the layoff of unit employees at plant #3, as well as plant #1 following the loss of the TRW/Volkswagen and other work, would have occurred regardless of whether or not the Union was voted in by employees. Accordingly, I find that the Respondent would have prevailed even if the General Counsel had been able to sustain his *Wright Line* burden of proof. For the above reasons, I find that the layoff of employees did not violate Section 8(a)(3) and (1) of the Act, as alleged.

3. The 8(a)(5) allegations

a. The September 1996 (White) handbook

The General Counsel contends that the Respondent violated Section 8(a)(5) and (1) when, without prior notice to or bargaining with the Union, it issued the white employee handbook in September 1996, containing changes in employee terms and conditions of employment different from those found in the 1994 green handbook. More particularly, the General Counsel claims that the white book altered the 6-month bump-back rule for employees on layoff, as well as the length of time an employee would need to qualify for a particular job from 5 to 3 days. The Respondent asserts that the white handbook did not make any change in employee terms and conditions of employment, and that its sole purpose in issuing the handbook was to incorporate all existing policies and practices that were in effect before the arrival of the Union. The Respondent has the better of the argument.

Initially, there is no question that the 3-day qualifying rule included in the 1996 white handbook varies from the 5-day period found in the 1994 green book. Whether the 3-day rule constituted a change depends on whether the green book was in effect at the time the white handbook was issued, or whether, as claimed by the Respondent, it was "pulled" soon after being issued. There can be no disputing, given John Lee's credible testimony and the documentary evidence of record, that a 3-day rule was the established practice before the 1994 green book was ever issued. As to whether or not the green book was ever implemented, both Dybevik and Kozma, as noted, testified it was not, and that Respondent "pulled" it and continued to apply the policies and practices in effect prior to its issuance, which would have included the 3-day rule. The General Counsel produced no evidence to contradict their claims.

The Respondent, on the other hand, in addition to Dybevik's and Kozma's credible testimony, produced two documents—a December 1995 "Request to Return to Work" form submitted by laid-off employee Hugh Selby, and a "Layoff Agenda" and "Layoff Summary Information" letter used by Respondent in connection with a layoff that occurred in early 1995—which show that the 3-day qualifying rule, not the 5-day rule contained in the 1994 green book, was in effect even after the latter was issued (R. Exhs. 16; 17, p. 2).[25] The above documents provide clear evidence that the qualifying period for laid off employees seeking to bump back into a job was the same before and after the 1994 green book was issued, and serve to corroborate Dybevik's and Kozma's claim that while issued to employees, the green book was never implemented. Accordingly, I credit their testimony and find that except for provisions therein relating to employee wage structures, the 1994 green book was never actually put into effect.

The General Counsel, however, contends that the fact that Respondent had to amend the white book soon after its issuance to change the wording of the "classification bumping" policy, and that Nuñez gave employees two different interpretations of that policy in his October 1996, and June 1997 memos, is evidence that Respondent "had no idea what its policy was, is or should be," and that "there was no single coherent policy in existence at any one time." I disagree, for the "classification bumping" language in Nuñez' October 1996 memo is, as previously noted, identical to the language found in the 1989 yellow book, suggesting quite clearly that Respondent has maintained the same policy since at least 1989. The General Counsel has produced no evidence to show that Respondent has never applied this particular policy or practice in the past, or that some other practice was in effect prior to the October 1996 memo. The "classification bumping" language in Nuñez' October 1996 memo clearly did not change any similar policy found in the 1994 green book for, as previously noted, the latter guide contains no reference to a "classification bumping" procedure, nor, for that matter, any language that can reasonably be construed as modifying or revoking the "classification bumping" policy and practice set forth in the 1989 yellow book, and reiterated in the Nuñez memo. Nor, indeed, would it have mattered much if the green book contained any such language for, as found above, the green book was never implemented by Respondent.

[25] R. Exh. 16 is a two-page exhibit. The first page is an outline of a "Layoff Meeting Agenda," prepared sometime in May 1995, containing topics to be discussed with employees affected by the 1995 layoff. Item 2 of the agenda outline makes clear that the "Three day disqualifying rule" was discussed with employees. There would have been no need for any discussion of a 3-day rule if in fact Respondent was adhering to the Green book's 5day qualifying rule. Page 2 is the "Layoff Summary Information" that presumably was distributed to employees. It too makes clear, at item 4, that "The employee returning to the new job assignment (per the layoff bump) has *three (3) days* to demonstrate they can perform the job they will move into." (Emphasis added.)
R. Exh. 17, the "Return to Work" form signed by laid-off employee Selby sometime in December 1995, contains his acknowledgment that "I have three days to qualify for the job I accept."

Finally, while there is no explanation in the record for how the wrong "classification bumping" language found its way into the 1996 white book, there also is no basis in the record for believing, and neither the General Counsel nor the Charging Party has presented any credible evidence to show, that the error was anything other than a simple and honest mistake that in all likelihood occurred while Nuñez was compiling all of Respondent's preexisting policies and practices to be included into the white handbook. It is also patently clear from Nuñez uncontradicted testimony that employees knew quite well what Respondent's policy was regarding "classification bumping" for, as credibly explained by Nuñez, it was the unit employees who first brought the mistake to his attention, at which point he issued the October 1996 memo correcting the "classification bumping" language in the white handbook consistent with what it had been since 1989, and with the employees' own understanding of the policy. In light of these facts, I find no merit to the General Counsel's and Charging Party's arguments that the white book issued in September 1996, amounted to a unilateral and unlawful change in the unit employees' terms and conditions of employment. I shall accordingly dismiss this allegation.

b. The alleged job procedure modifications

The General Counsel further contends that the Respondent made unilateral changes to the procedures used by employees to perform their work, and that such changes are mandatory subjects of bargaining as they impact the manner by which employees carry out their day-to-day tasks. The Respondent seeks dismissal of this allegation arguing that the General Counsel has presented no evidence that changes in its job procedures were in fact made. I agree with the Respondent.

The only evidence produced by the General Counsel in support of this allegation is a January 30, 1997 revised index of Respondent's "Procedure Manual" listing numerous sections of the manual as having been "deleted," and testimony from Whiteoak that two of sections shown as having been deleted—4.002 and 4.003—had been in effect prior to January 30, 1997 (GC Exh. 16; Tr. 109). Whiteoak, as previously found, was not a credible witness. Thus, absent evidence to corroborate his claim that the provisions were remained in effect prior to January 30, 1997, his testimony in this regard is entitled to no weight. No such evidence, in any event, was produced here. Instead, the General Counsel points to the "Revised:01/30/97" notation on General Counsel's Exhibit 16 as supporting Whiteoak's testimony and the complaint allegation that changes in the Procedure Manual occurred on January 30, 1997. It is not, however, clear what to what precisely the "Revised:01/30/97" notation refers: e.g, the index, the manual itself, or both. Further, the General Counsel has not shown when the deletion of the various sections in the Procedure Manual, in fact, occurred. It is quite possible, for example, that some or all of the "deleted' sections had been deemed obsolete or no longer controlling long before January 30, 1997, even prior to the Union's arrival, and that Respondent simply failed to update its manual to reflect these changes.

Further, except for two sections in the Procedures Manual mentioned by Whiteoak as having been in effect prior to January 30, 1997 (Tr. 109), the General Counsel produced no evidence to show precisely what, if any, procedural changes were made by Respondent on January 30, 1997, or how any such alleged change affected the employees' terms and conditions of employment. In sum, without more, the mere fact that the index shows that certain portions of the manual have been deleted, and that the index contains a notation reading, "Revised: 01/30/97," does not, I find, constitute proof that Respondent unilaterally altered the employees' terms and conditions of employment. Accordingly, I dismiss this particular allegation as being without merit.

c. The refusal to furnish information

The complaint alleges, the General Counsel contends, and I find, that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to comply with the Union's December 20, 1996 request for information. It is well settled that an employer must provide the union that represents its employees with requested information that is necessary and relevant to the performance of its role as collective-bargaining representative. *Central Manor Home for Adults*, 320 NLRB 1009, 1010 (1996), citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). The Respondent here does not contend that the information sought by the Union, and described above, is not necessary or relevant, nor does it dispute that it has not complied with the Union's request. Rather, the Respondent defends its refusal to furnish the information on grounds that it was under no obligation to do so because it has not recognized the Union and is currently challenging its certification in the courts (RB 4).

However, regardless of what the Respondent may wish to believe and notwithstanding its current appeal, I am bound to accept the Board's certification of the Union as valid and proper. *Highland Superstores*, 301 NLRB 199, 208 (1991). Thus, as the duly certified bargaining representative of the Respondent's employees, the Union was entitled to the information requested on December 20, 1996, and on February 14, 1997, for I find, and the Respondent does not contend otherwise, that such information involved unit employees' terms and conditions of employment and, consequently, was relevant and necessary to the Union. Accordingly, the Respondent's failure to comply with those requests was, as found above, violative of Section 8(a)(5) and (1) of the Act.

d. The alleged failure to bargain over the change in plant #3 operations and to lay off employees

The General Counsel, as noted, contends that Respondent did not merely suspend operations at plant #3, but rather permanently closed the facility in June 1997, and that that decision, along with its decision to lay off employees, was unlawful in that it was unilaterally made without first affording the Union an opportunity to bargain over the decision and its effects on unit employees. The Respondent admits it did not bargain with the Union but contends it had no obligation to do so because its decision to suspend operations at plant #3 and lay off employees was a purely business one exempt from the bargaining process under the Supreme Court's holding in *First National Maintenance Corp.*, 452 U.S. 666 (1981). Respondent's contention is without merit.

Initially, I find the Supreme Court's holding in *First National Maintenance Corp.*, supra, not applicable here. *First National Maintenance Corp.* involved a decision by an employer to permanently close down a part of its operations. In holding that the employer was under no obligation to bargain over its decision, the Court reasoned that the employer's decision to shut down a portion of its business involved "a change in the scope and direction of the enterprise . . . akin to the decision whether to be in business at all." Id. at 676.[26] Here, as the Respondent readily admits, plant #3 has not been permanently closed. Rather, the Respondent has merely temporarily shut down that facility and moved all remaining work, including the "413" work it acquired on June 1, 1997, and related equipment, to plant #1, with the expectation that operations at plant #3 would be resumed sometime in the near future, possibly by 1999, as shown in the June 21, 1996 long range plan prepared by its sales department (GC Exh. 20; RB:16; 36). Thus, the suspension of operations at plant #3 did not result in a change in the scope and direction of Respondent's business. Rather, all that has occurred here by virtue of Respondent's decision to suspend operations at plant #3 is that whatever work remained or could have been done at plant #3 was now to be performed with fewer employees at plant #1.

In fact, as the General Counsel correctly asserts on brief (GCB 18), the Respondent's decision to consolidate operations is more analogous to the employer's decision in *Holmes & Narver*, 309 NLRB 146 (1992), in which the employer combined two departments and reduced a motor pool operations from three divisions to two, resulting in the layoff of employees, without affording the laid off employees' representative an opportunity to bargain. In rejecting the employer's argument that it was exempt from bargaining over the layoffs under *First National Maintenance Corp.*, the Board in *Holmes & Narver*, supra at 147, initially noted that it was "dealing with layoffs that [were] made in connection with a decision to continue doing the same work with essentially the same technology, but to do it with fewer employees by virtue of giving some of the employees more work assignments." Quoting from *First National Maintenance Corp*, the Board reasoned that such a decision does not fall within the category of decisions "involving a change in the scope and direction of the enterprise . . . akin to the decision whether to be in business at all." Distinguishing, implicitly, the employer's decision in *First National Maintenance Corp.* from that of the *Holmes & Narver* employer, the Board explained that in the latter case, the employer "did not abandon a line of business or cease a contractual relationship with a particular customer, or make any other change that significantly altered the scope and direction of its business." Rather, the employer "did no more than consolidate and change the jobs in the motor pool . . . and lay off a few employees elsewhere."

[26] The Court distinguished the employer's decision to permanently shut down a part of its business from other management decisions involving such matters as the order of succession of layoffs and recall, production quotas, and work rules. The latter, the Court noted, unlike the employer's decision to shut down part of its business, "are 'almost exclusively an aspect of the relationship' between employer and employee" and do constitute mandatory subjects of bargaining. Id.

Also analogous to the case at hand is *Westinghouse Electric Corp.*, 313 NLRB 452 (1993). There, an employer's decision to close one of its laboratories (the West Building lab) and to transfer work performed there to another of its laboratories located at the same site (the East Building lab), and to lay off employees at the closed facility, was deemed to be a mandatory bargaining subject. The Board found *Holmes & Narver* to be controlling because as in the latter case, the employer in *Westinghouse Electric Corp.*, had "essentially decided to continue doing the same work with fewer employees," a decision that did not involve "a change in the scope and direction of the corporate enterprise." Id. at 453.

The Respondent's decision here to consolidate both facilities by suspending operations at plant #3 by moving all remaining work and related equipment from that facility to plant #1, and having such work done at plant #1 with fewer employees, is no different than what the employers in *Holmes & Narver* and *Westinghouse Electric* had done, and likewise involved no change in the scope and direction of Respondent's business. Consequently, the Respondent's decision, like the ones in *Holmes & Narver* and *Westinghouse Electric*, falls within the second category of management decisions identified by the Court in *First National Maintenance Corp.*, as involving such matters as the order and succession of layoffs and recalls, production quotas, and work rules, and which are almost exclusively "an aspect of the relationship between employer and employee," thereby making it a mandatory subject of bargaining. As such, the Respondent was not free to unilaterally implement it without first notifying and bargaining with the Union over that decision and its effect on unit employees. Further, as the layoffs were part and parcel of that decision, the Respondent was also obligated to bargain first with the Union before putting them into effect. *Holmes & Narver*, supra at 148. The Respondent has not done so, and admits as much. On these facts, I find, in agreement with the General Counsel and the Charging Party, that the Respondent's refusal to bargain over the decision to suspend operations, its effect on unit employees, and over the decision to conduct a layoff, violated Section 8(a)(5) and (1) of the Act, as alleged in the complaint.

CONCLUSIONS OF LAW

1. The Respondent, Contech Division, SPX Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. On August 5, 1996, the Union was duly certified by the Board as the exclusive collective-bargaining representative of the Respondent's employees in the following appropriate unit:

> All production and maintenance employees employed by the Employer at its facilities located at 51241 M-51 North, Dowagiac, Michigan, but excluding all office clerical employees, guards and supervisors as defined in the Act.

4. By suspending operations at plant #3 and laying off employees without giving the Union prior notice and an opportu-

nity to bargain over such decisions, or over the effects of those decisions on unit employees, and by refusing to provide the Union with relevant and necessary information it requested on December 20, 1996, and February 14, 1997, the Respondent has violated Section 8(a)(5) and (1) of the Act.

5. The above-described conduct are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. Except as found above, the Respondent has not engaged in any other unfair labor practices.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

To remedy Respondent's unlawful failure and refusal to bargain over its decision to suspend operations at plant #3 and lay off employees, the Respondent shall be ordered to bargain, on request, with the Union over its above decision and its effects on unit employees, and shall be required to make unit employees whole by offering individuals laid off due to its unlawful decision full reinstatement to their former or substantially equivalent jobs, or to substantially equivalent jobs if their former jobs no longer exist, and to make them whole for any losses they may have suffered as a result of Respondent's unlawful unilateral conduct, in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest on such amounts to be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Finally, the Respondent shall be required, in a timely manner, to furnish the Union with the information requested on December 20, 1996, and February 14, 1997.[27]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[28]

ORDER

The Respondent, Contech Division, SPX Corporation, Dowagiac, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to give International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, which is the duly certified collective bargaining representative of employees in the bargaining unit described below, prior notice of and an opportunity to bargain over, its decision to suspend operations at its Dowagiac plant #3, and to lay off unit employees, and over the effects of such decision on unit employees. The appropriate unit includes:

> All production and maintenance employees employed by the Employer at its facilities located at 51241 M-51 North, Dowagiac, Michigan, but excluding all other employees, including all office clerical employees, guards, and supervisors as defined in the Act.

(b) Failing and refusing to provide the Union with the relevant and necessary information requested on December 20, 1996, and February 14, 1997.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union over its decision to suspend operations at plant #3 and to lay off bargaining unit employees, and as to the effects of the decision on unit employees and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Furnish the Union in a timely manner the information requested on December 20, 1996, and February 14, 1997, which information is relevant and necessary to the Union for the performance of its role as the unit employees' exclusive bargaining representative.

(c) Within 14 days of this Order, offer full reinstatement to unit employees laid off due to Respondent's unlawful unilateral decision to suspend operations at plant #3, to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to the rights and privileges they previously enjoyed.

(d) Make the above-laid-off employees whole for any losses they may have suffered as a result of their layoffs, with interest, as described in the Remedy section of this decision.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facilities in Dowagiac, Michigan, copies of the attached notice marked "Appendix."[29] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 2, 1996.

[27] *I & F Corp.*, 322 NLRB 1037 (1997).

[28] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[29] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to notify and bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, which is the duly certified exclusive bargaining representative of our employees in the bargaining unit described below, over our decision to suspend operations at Dowagiac plant #3 and to lay off unit employees, or to bargain over the effects of that decision said employees. The appropriate unit includes:

> All production and maintenance employees employed by the Employer at its facilities located at 51241 M-51 North, Dowagiac, Michigan, but excluding all other employees, including all office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT refuse to furnish the Union with the information it requested on December 20, 1996, and February 14, 1997, which is relevant to and necessary for the Union in the performance of its duties as your exclusive collective-bargaining representative.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union over our decision to suspend operations at plant #3 and to lay off unit employees, and over the effects of that decision on employees, and shall embody any understanding reached in a signed agreement.

WE WILL, in a timely manner, furnish the Union with the information requested on December 20, 1996, and February 14, 1997.

WE WILL, within 14 days from the date of the Board's Order, offer unit employees, who were laid off due to our unlawful unilateral conduct in suspending operations at plant #3, full reinstatement to their former jobs or, if those jobs no longer exist, to a substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make the above-referenced laid-off employees whole for any loss of earnings and other benefits resulting from their layoffs, less any net interim earnings, plus interest.

CONTECH DIVISION, SPX CORPORATION